IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7992 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LUMBHANI NIRANJAN KAKUBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7992 of 2003

MR JJ YAJNIK for Petitioner No. 1

MR KP RAVAL AGP for Respondent No. 1-3

MR LR PUJARI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 19/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order

dated 09/05/03 passed by the respondent State Government at Annexure 'P' to the petition by which the petitioner was dismissed from service with immediate effect, on the ground that the petitioner had not applied for the post of Medical Officer Class II, the examinations for which were conducted by the Gujarat Public Service Commission (for short, "the G.P.S.C.").

2.0 The facts of the case are that the petitioner was appointed to the post of Medical Officer, Class II on ad hoc basis by Office Order dated 09/05/98. Meanwhile, the G.P.S.C. had conducted examinations for the said posts by direct recruitment vide their advertisement in the year 1994-95. The petitioner had applied for the said posts and was selected. He was placed at Sr.No.9 in the select list of successful candidates. The petitioner was offered appointment vide Order dated 14/09/95. Pursuant to this order, by Order dated 07/03/96, the petitioner was directed to obtain physical fitness certificate and other terms and conditions mentioned therein.

2.1 The petitioner made communications dated 18/03/96 and 20/01/97 requesting the respondent authorities that since he was working as a Medical Officer in E.S.I., Rajkot, he may be appointed in Rajkot City instead of Rajkot Rural, as he was already working in Rajkot City since 1992 and had to attend to his ailing parents. But, he received no reply to the said communications. The petitioner received Order dated 05/05/98, whereby he was posted at Gondal on ad hoc basis. It is the case of the petitioner that though the petitioner had requested the appointment on regular basis, it was not considered by the respondent authorities, and instead, he was given appointment on ad hoc basis and was posted at the place not of his choice i.e. at Gondal. Therefore, the petitioner made representation dated 25/05/98 requesting the respondent authorities to consider his appointment on regular basis as he had already cleared the G.P.S.C. examination for the said posts and was placed at Sr.No.9 in the select list of candidates.

2.2 In the year 1999, another advertisement came to published by the G.P.S.C. and the petitioner appeared in the said examination also. He cleared the said examination and by Order dated 23/07/99, the respondent authorities offered appointment to the petitioner as a Medical Officer, Class II. The respondent authorities offered posting to the petitioner under the District Panchayat, Jamnagar. The petitioner by letter dated 29/10/99 requested the respondent authorities for extention of time for joining office. Again, by letter dated 25/02/2000, the petitioner was ordered to resume

duties immediately at District Panchayat, Jamnagar.

2.3 The petitioner received order dated 09/05/03 (Annexure 'P') wherein it was stated that as the petitioner had not complied with Condition No.5 of the Resolution dated 12/03/69, the petitioner was ordered to be terminated as Medical Officer, Class II. Hence, this petition.

3.0 Mr.J J Yagnik learned advocate for the petitioner has submitted that the respondent authorities had given appointment to more than hundreds of candidates on ad hoc basis in the year 1996-98 and that out of them many had not even cleared the G.P.S.C. Exams. He has submitted that there was no condition in the appointment order requiring the petitioner to file an application before the G.P.S.C. for the said posts. Therefore, the ground taken by the G.P.S.C. that the petitioner had failed to make an application for appearing in the G.P.S.C. Exams which was conducted in the year 1994, is totally baseless and without any substance.

3.1 Mr.Yagnik for the petitioner has further submitted that pursuant to the selection by the G.P.S.C. in February 1996, the petitioner was offered appointment on regular basis by Order dated 07/03/96. He has submitted that from the documents on record it is clear that the Order dated 09/05/03 was passed contrary to the evidence on record, inasmuch as in February 1996 the name of the petitioner was recommended by the G.P.S.C. and by Order dated 07/03/96, the petitioner was offered appointment. Therefore, the order of the respondent authority is illegal and is required to be quashed and set aside.

4.0 I have heard the learned advocate for the parties and have gone through the averments made in the petition. The reply filed by the respondent authorities is silent on the fact that the petitioner was selected as a Medical Officer, Class II, in the Examination which was conducted by the G.P.S.C. as per its advertisement in the year 1994-95. The petitioner was placed at Sr.No.9 in the select list of candidates and was offered appointment by Order dated 14/09/95. By Order dated 07/03/96, the petitioner was directed to obtain physical fitness certificate and other terms and conditions mentioned therein. Therefore, it is clear that the petitioner was appointed on regular basis as he had cleared the G.P.S.C. examination for the said posts as per its advertisement in the year 1994-95.

4.1 From the documents on record, it is clear that the Order dated 09/05/03 was passed contrary to the evidence on record, inasmuch as in February 1996 the name of the petitioner was selected by the G.P.S.C. and pursuant to it he was offered the appointment Order dated 07/03/96. On this ground itself, the order qua the petitioner dated 09/05/03, is required to be quashed and set aside.

5.0 For the foregoing reasons, this petition is allowed. The order of dismissal dated 09/05/03 passed by the respondent authorities at Annexure 'P' to the petition, is quashed and set aside. It is directed that the respondent authorities will verify the documents which may be produced by the petitioner in support of his claim for appointment as a Medical Officer, Class II. Ultimately, if it is found that the Order dated 07/03/96 is passed with the concurrence of the G.P.S.C., then the petitioner be given appropriate benefits in accordance with law. Rule is made absolute to the aforesaid extent with no orders as to costs.

(K. S. Jhaveri, J.)

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